

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8979]

RIN 1545-AW91

Notice and Opportunity for Hearing upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the provision of notice to taxpayers of the filing of a notice of federal tax lien (NFTL). A taxpayer receiving notice of a NFTL may request a hearing with IRS Office of Appeals and may subsequently seek judicial review of Appeals' determination. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property or rights to property the IRS files a NFTL.

DATES: Effective Date: These regulations are effective on January 18, 2002.

APPLICABILITY DATE: These regulations apply to any notice of Federal tax lien which is filed on or after January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622-3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6320 of the Internal Revenue Code to taxpayers of a right to a hearing (a collection due process, or CDP, hearing) after the filing of a notice of federal tax lien (NFTL). These final regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206, 112 Stat. 685)(RRA 1998). The final regulations affect taxpayers against whose property or rights to property the IRS files a NFTL on or after January 19, 1999.

On January 22, 1999, temporary regulations (TD 8810) implementing these changes made by section 3401 of RRA 1998 were published in the **Federal Register** (64 FR 3398). A notice of proposed rulemaking (REG-116824-98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3461). No public hearing was requested or held. No written comments were received within the 90-day period provided for comments, although two comments were received after this period.

Section 6330 also was added by section 3401 of RRA 1998 and provides for notice to taxpayers of a right to a hearing prior to a levy. A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 22, 1999, temporary regulations (TD 8809) implementing the changes made by section 3401 of RRA 1998 with respect to section 6330 were published in the **Federal Register** (64 FR 3405). A notice of proposed rulemaking (REG-117620-98) cross-referencing those temporary regulations was published on the same day in the **Federal Register** (64 FR 3462). Final regulations under section 6330 are being published in the **Federal Register** along with these final regulations under section 6320.

After consideration of the comments, the proposed regulations, with certain changes to reflect the IRS administrative practice under section 6320, are adopted as final regulations. These comments and changes are discussed below.

Summary of Comments

Although the two comments were directed generally at the proposed regulations under section 6330, the comments are discussed here because they address provisions that, in large part, apply to both section 6320 and section 6330.

Both commentators urged that final regulations under section 6330 provide that potentially affected third-parties (i.e., persons not liable for the tax at issue) are entitled to notice and a hearing before the IRS Office of Appeals (Appeals) before the IRS levies on any property or right to property. Treasury and the IRS have concluded that the person liable for the tax set out in the collection due process notice (CDP Notice), whether issued under section 6320 or section 6330, is the person entitled to a CDP Notice and a CDP hearing under those sections. Section 6320(a)(1) provides that a CDP Notice provided under section 6320 will be sent to the person described in section 6321. The person described in section 6321 is the person liable to pay the tax - i.e., the taxpayer.

With respect to section 6330, the legislative history to that section indicates that Congress intended to supplement the existing notice requirement under section 6331. Under section 6331, the IRS generally must provide a person liable for any tax (and who refuses to pay the tax after notice and demand) notice before levying on the property or rights to property of that person. Section 6330, in addition to the notice required under section 6331, provides for notice of the right to an Appeals hearing before levy.

Accordingly, the final regulations under both section 6320 and section 6330 provide that the person entitled to a CDP Notice under those sections is the person liable for the tax set out in the CDP Notice, i.e., the taxpayer. Generally, when a third party's rights are affected by lien or levy, those rights can be protected through other administrative and judicial remedies, such as an administrative hearing before Appeals under its Collection Appeals Program or a wrongful levy or quiet title action.

One commentator requested that the final regulations establish formal procedures for the conduct

of a CDP hearing as well as procedures for the admission and preservation of evidence to be considered by Appeals. Treasury and the IRS have declined to adopt this comment. Section 6320 and section 6330 are intended to give all taxpayers a right to an impartial Appeals review of the filing of a NFTL or of an intended levy action, with an additional right of judicial review of the Appeals determination. Section 6330(c) (which is applicable to both section 6320 and section 6330) and the proposed regulations under section 6320 and section 6330 (as modified by final regulations) already set out the specific requirements, including the issues to be considered, for a CDP hearing and require that Appeals issue a written determination (Notice of Determination) setting forth Appeals' findings and decisions. Due to the varied circumstances of taxpayers and the varied situations in which the filing of a NFTL or an intended levy action may arise, the final regulations provide flexibility regarding the manner in which a CDP hearing may be conducted.

One commentator stated that taxpayers should have a right to judicial review in a retained jurisdiction case under section 6330(d)(2). Treasury and the IRS decline to adopt this comment. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing with respect to the tax set out on a CDP Notice issued under section 6330. Section 6320(b)(2) provides a similar rule for section 6320. Under section 6330(d)(1), applicable to both section 6320 and section 6330, a taxpayer is entitled to judicial review only after the issuance of the determination by Appeals after a CDP hearing. Once the Notice of Determination has been issued, any subsequent consideration of the case by Appeals, including changed circumstances, based on Appeals' retained jurisdiction under section 6330(d)(2), is not part of the CDP hearing subject to judicial review.

One commentator also urged that a taxpayer be allowed to challenge the existence or amount of the tax liability set out in a CDP Notice issued under section 6330 even if the taxpayer had previously failed to raise such a challenge pursuant to a CDP Notice issued under section 6320. The commentator points to section 6330(c)(4), which provides generally that a person who had meaningfully participated in a section 6320 CDP hearing in which an issue was raised may not raise that same issue in a subsequent section 6330 CDP hearing. Treasury and the IRS have concluded that section 6330(c)(2)(B), addressing specifically a person's right to challenge the underlying tax liability, is clear that any prior opportunity to challenge the underlying tax liability, which would include a section 6320 CDP hearing, precludes a taxpayer from doing so at a later section 6330 CDP hearing.

Explanation of Revisions

The proposed regulations provided that district directors, directors of service centers and the Assistant Commissioner (International) would be the IRS officials required to give notice of the right to, and the opportunity for, a CDP hearing to a taxpayer following the filing of a NFTL. To reflect the recent reorganization of the IRS, paragraph (a)(1) of the final regulations eliminates reference to these specific officers and substitutes a general authorization to the IRS to provide such notification.

Question and Answer (Q&A) C1 of the proposed regulations stated that a request for a CDP hearing must be signed by the taxpayer or the taxpayer's authorized representative. Requests for CDP hearings on occasion are not signed by the taxpayer or the taxpayer's authorized representative but instead are filed on the taxpayer's behalf by the taxpayer's spouse or other personal representative not authorized to practice before Appeals. The IRS' administrative practice has been to treat these requests as complying with the temporary regulations provided that the taxpayer or the taxpayer's authorized

representative signs the request within a reasonable period of time. Q&A C1 in the final regulations is revised to reflect this administrative practice.

Q&A C6 of the proposed regulations provided that a request for a CDP hearing should be filed with the IRS office that issued the CDP Notice or, if the taxpayer did not know the address of that IRS office, then with one of two alternative IRS offices. Q&A C6 of the final regulations requires that a request for a CDP hearing be filed with the IRS office and address indicated on the CDP Notice. The final regulations change the alternative addresses to reflect the IRS' s recent reorganization. The final regulations provide that if no address is provided in the CDP Notice, then the request must be filed with the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. The final regulations provide a toll-free number to obtain the address of the office of the appropriate compliance area director, or his or her successor.

The proposed regulations did not discuss how a CDP hearing should be conducted, or where or how it may occur. A new Q&A D6, relating to how CDP hearings are conducted, and a new Q&A D7, relating to when in-person meetings will be held, are added to the final regulations to clarify how a CDP hearing may be conducted.

Paragraph (e)(2) of the proposed regulations, dealing with spousal defenses under section 6015, has been revised in the final regulations to also address spousal defenses raised under section 66. Q&A E3 of the proposed regulations, dealing with the extent of any limitations imposed under section 6330(c)(2)(B), has been revised in the final regulations to also address the effect of a spousal defense raised under section 66. The proposed regulations did not specifically discuss whether a taxpayer may raise a spousal defense at a CDP hearing when the taxpayer has raised that defense administratively, but has not raised it in a judicial proceeding that has become final. A new Q&A E4 is added to the final regulations to provide that a spousal defense may be raised if the IRS has not made a final determination as to that spousal defense in a final determination letter or statutory notice of deficiency. Q&A E4 of the proposed regulations, dealing with spousal defenses that were raised in a prior judicial proceeding, has been revised to also discuss the effect of a spousal defense raised under section 66, and has been renumbered as Q&A E5 of the final regulations.

Q&A E8 of the proposed regulations addressed whether a Notice of Determination was required to be issued within a certain period of time after the CDP hearing. That Q&A, now Q&A E9 of the final regulations, has been revised to clarify there are no time limitations on when a CDP hearing must be held or on when a Notice of Determination must be issued, except that both must be done as expeditiously as possible under the circumstances.

Under section 6330(c)(2)(B), a taxpayer may not challenge the existence or the amount of the underlying tax liability at a CDP hearing if the taxpayer has had a prior opportunity to dispute that liability – i.e., the taxpayer had received a statutory notice of deficiency or otherwise had an opportunity to dispute the underlying tax liability. The final regulations add a new Q&A E11 to address the effect of an Appeals officer' s or employee' s consideration of liability issues when the taxpayer has had a prior opportunity to dispute the underlying tax liability. In such circumstances, any consideration of liability issues by the Appeals officer or employee is discretionary and is not treated as part of the CDP hearing. Accordingly, the Appeals officer' s or employee' s determinations, if any, made with respect to liability issues are not required to appear in the Notice of Determination. Any determinations regarding the underlying tax liability

that are included in the Notice of Determination are not reviewable by a district court or the Tax Court.

Q&A F2 and Q&A I5 of the proposed regulations, both relating to judicial review of CDP cases where a spousal defense under section 6015 is raised, specifically referred only to paragraphs (b) and (c) of section 6015. Q&A F2 and Q&A I5 have been revised in the final regulations also to include a denial of relief under section 6015(f).

Section 6320(c) incorporates by reference section 6330(e), which generally provides for the suspension of the periods of limitation under section 6502, section 6531, and section 6532 after the filing of a request for a CDP hearing under section 6330. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing are suspended during this same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. A new Q&A G3 is added to the final regulations to clarify what collection actions the IRS may take after a request for a CDP hearing under section 6320 has been filed.

As set out in Q&A G3 of the final regulations, the IRS may take enforcement actions for tax periods and taxes not covered by a CDP Notice that is the subject of the CDP hearing requested under section 6320. For example, the IRS may file NFTLs for tax periods or taxes not covered by the CDP Notice (although such filings may give rise to issuance of a CDP Notice under section 6320) and may levy for those taxes and tax periods and for the tax and tax periods covered by the CDP Notice under section 6320, if the CDP requirements under section 6330 as to those taxes and tax periods have been satisfied and CDP proceedings, if any, concluded. The IRS also is not prohibited by section 6330(e) from taking other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice issued under section 6320 or from offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the IRS may levy upon any state tax refund due the taxpayer, and, under appropriate circumstances, make jeopardy levies for the tax and tax periods covered by the CDP Notice at issue in the CDP hearing. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax periods set out in the CDP Notice.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6320-1 is added under the undesignated centerheading "Lien for Taxes" to read as follows:

§301.6320-1 Notice and opportunity for hearing upon filing of notice of federal tax lien.

(a) Notification--(1) In general. For a notice of Federal tax lien (NFTL) filed on or after January 19, 1999, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to notify the person described in section 6321 of the filing of a NFTL not more than five business days after the date of any such filing. The Collection Due Process Hearing Notice (CDP Notice) and other notices given under section 6320 must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, not more than five business days after the day the NFTL was filed. For further guidance regarding the definition of last known address, see § 301.6212-2.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the person entitled to notice under section 6320?

A-A1. Under section 6320(a)(1), notification of the filing of a NFTL on or after January 19, 1999, is required to be given only to the person described in section 6321 who is named on the NFTL that is filed. The person described in section 6321 is the person liable to pay the tax due after notice and demand who refuses or neglects to pay the tax due (hereinafter, referred to as the taxpayer).

Q-A2. When will the Internal Revenue Service (IRS) provide the notice required under section 6320?

A-A2. The IRS will provide this notice within five business days after the filing of the NFTL.

Q-A3. Will the IRS give notification to the taxpayer for each tax period listed in a NFTL filed on or after January 19, 1999?

A-A3. Yes. A NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each unpaid tax and tax period listed in the NFTL.

Q-A4. Will the IRS give notification to the taxpayer of any filing of a NFTL for the same tax period or periods at another place of filing?

A-A4. Yes. The IRS will notify a taxpayer when a NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q-A5. Will the IRS give notification to the taxpayer if a NFTL is filed on or after January 19, 1999, for a tax period or periods for which a NFTL was filed in another recording office prior to that date?

A-A5. Yes. The IRS will notify a taxpayer when each NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q-A6. Will the IRS give notification to the taxpayer when a NFTL is refiled on or after January 19, 1999?

A-A6. No. Section 6320(a)(1) does not require the IRS to notify the taxpayer of the refiling of a

NFTL. A taxpayer may, however, seek reconsideration by the IRS office that is collecting the tax or refiling the NFTL, an administrative hearing before the IRS Office of Appeals (Appeals), or assistance from the National Taxpayer Advocate.

Q-A7. Will the IRS give notification to a known nominee of, or a person holding property of, the taxpayer of the filing of the NFTL?

A-A7. No. Such person is not the person described in section 6321 and, therefore, is not entitled to notice, but such persons have other remedies. See A-B5 of paragraph (b)(2) of this section.

Q-A8. Will the IRS give notification to the taxpayer when a subsequent NFTL is filed for the same period or periods?

A-A8. Yes. If the IRS files an additional NFTL with respect to the same tax period or periods for which an original NFTL was filed, the IRS will notify the taxpayer when the subsequent NFTL is filed. Not all such notices will, however, give rise to a right to a CDP hearing (see paragraph (b) of this section).

Q-A9. How will notification under section 6320 be accomplished?

A-A9. The IRS will notify the taxpayer by letter. Included with this letter will be the additional information the IRS is required to provide taxpayers as well as, when appropriate, a Form 12153, Request for a Due Process Hearing. The IRS may effect delivery of the letter (and accompanying materials) in one of three ways: by delivering the notice personally to the taxpayer; by leaving the notice at the taxpayer's dwelling or usual place of business; or by mailing the notice to the taxpayer at his last known address by certified or registered mail.

Q-A10. What must a CDP Notice given under section 6320 include?

A-A10. These notices must include, in simple and nontechnical terms:

- (i) The amount of the unpaid tax.
- (ii) A statement concerning the taxpayer's right to request a CDP hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.
- (iii) The administrative appeals available to the taxpayer with respect to the NFTL and the procedures relating to such appeals.
- (iv) The statutory provisions and the procedures relating to the release of liens on property.

Q-A11. What are the consequences if the taxpayer does not receive or accept a CDP Notice that is properly left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address?

A-A11. A CDP Notice properly sent by certified or registered mail to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q-A12. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the end of the five business day notification period?

A-A12. A NFTL becomes effective upon filing. The validity and priority of a NFTL is not conditioned on notification to the taxpayer pursuant to section 6320. Therefore, the failure to notify the

taxpayer concerning the filing of a NFTL does not affect the validity or priority of the NFTL. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A-B3 of paragraph (b)(2) and Q&A-C8 of paragraph (c)(2) of this section.

(3) Examples. The following examples illustrate the principles of this paragraph (a):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W will each be notified of the filing of the NFTL.

Example 2. Employment taxes for 1997 are assessed against ABC Corporation. A NFTL is filed against ABC Corporation for the 1997 liability in County X on June 5, 1998. A NFTL is filed against ABC Corporation for the 1997 liability in County Y on June 17, 1999. The IRS will notify the ABC Corporation with respect to the filing of the NFTL in County Y.

Example 3. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E' s name. A NFTL is filed against D in County X on June 5, 1999, for D' s federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will notify D of the filing of the NFTL in both County X and County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the NFTL filed in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(b) Entitlement to a CDP hearing--(1) In general. A taxpayer is entitled to one CDP hearing with respect to the first filing of a NFTL (on or after January 19, 1999) for a given tax period or periods with respect to the unpaid tax shown on the NFTL if the taxpayer timely requests such a hearing. The taxpayer must request such a hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q-B1. Is a taxpayer entitled to a CDP hearing with respect to the filing of a NFTL for a type of tax and tax periods previously subject to a CDP Notice with respect to a NFTL filed in a different location on or after January 19, 1999?

A-B1. No. Although the taxpayer will receive notice of each filing of a NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for the type of tax and tax periods with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to that unpaid tax. Accordingly, if the taxpayer does not timely request a CDP hearing with respect to the first filing of a NFTL on or after January 19, 1999, for a given tax period or periods with respect to an unpaid tax, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of the

Appeals determination with respect to the NFTL. Under such circumstances, the taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q-B2. Is the taxpayer entitled to a CDP hearing when a NFTL for an unpaid tax is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed for the same unpaid tax in another recording office prior to that date?

A-B2. Yes. Under section 6320(b)(2), the taxpayer is entitled to a CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same unpaid tax and tax period or periods.

Q-B3. When the IRS provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP hearing before Appeals?

A-B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q-B4. If the IRS sends a second CDP Notice under section 6320 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a section 6320 CDP hearing based on the second CDP Notice?

A-B4. No. The taxpayer is entitled to a CDP hearing under section 6320 for each tax period only with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax.

Q-B5. Is a nominee of, or a person holding property of, the taxpayer entitled to a CDP hearing or an equivalent hearing?

A-B5. No. Such person is not the person described in section 6321 and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. However, any such administrative hearing would not be a CDP hearing under section 6320 and any determination or decision resulting from the hearing would not be subject to judicial review under section 6320. Such person also may avail himself of the administrative procedure included in section 6325(b)(4) or of any other procedures to which he is entitled.

(3) Examples. The following examples illustrate the principles of this paragraph (b):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. The IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W are each entitled to a CDP hearing with respect to the NFTL filed in County X. On June 17, 1999, a NFTL for the same tax liability is filed against H and W in County Y. The IRS will give H and W notification of the NFTL filed in County Y. H and W, however, are not entitled to a CDP hearing or an equivalent hearing with respect to the NFTL filed in County Y.

Example 2. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E' s name. A NFTL is filed against E, as nominee of D in County X on June 5, 1999, for D' s federal income tax liability for 1997. The IRS will give D a CDP Notice with respect to the NFTL filed in County X. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the filing of the NFTL in County X. Although E is named on the NFTL filed in County X, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(c) Requesting a CDP hearing--(1) In general. When a taxpayer is entitled to a CDP hearing under section 6320, the CDP hearing must be requested during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with a CDP Notice with respect to the filing of the NFTL.

(2) Questions and answers. The questions and answers -illustrate the provisions of this paragraph (c) as follows:

Q-C1. What must a taxpayer do to obtain a CDP hearing? A-C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form, which requests a CDP hearing, will be acceptable. The request must include the taxpayer' s name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer' s authorized representative and dated. The CDP Notice should include, when appropriate, a Form 12153 (Request for a Collection Due Process Hearing) that can be used by the taxpayer to request a CDP hearing.

(ii) The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(iii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll-free, 1-800-829-3676.

(iv) The taxpayer may perfect any timely written request for a CDP hearing which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer' s behalf by the taxpayer' s spouse or any other representative by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer' s behalf.

Q-C2. Must the request for the CDP hearing be in writing?

A-C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal.

Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q-C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6320?

A-C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Any request filed during the five business day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period. The period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320 is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, the taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q-C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A-C4. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A-C6 of this paragraph (c)(2).

Q-C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A-C5. No. Section 6320 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6320 must request such a hearing within the 30-day period that commences the day after the end of the five business day notification period.

Q-C6. Where should the written request for a CDP hearing be sent?

A-C6. The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP Notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing their taxpayer identification number (SSN or TIN).

Q-C7. What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period that commences the day after the end of the five business day notification period?

A-C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer will forego the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q-C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A-C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q-C9. Can taxpayers attempt to resolve the matter of the NFTL with an officer or employee of the IRS office collecting the tax or filing the NFTL either before or after requesting a CDP hearing?

A-C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax or filing the NFTL, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) Examples. The following examples illustrate the principles of this paragraph (c):

Example 1. A NFTL for a 1997 income tax liability assessed against individual A is filed in County X on June 17, 1999. The IRS mails a CDP Notice to individual A's last known address on June 18, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The five business day period within which the IRS is required to notify individual A of the filing of the NFTL in County X expires on June 24, 1999. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in Example 1, except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in Example 1, individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in Example 2, except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in Example 1, except the IRS determines that the CDP Notice mailed on June 18, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last

known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) Conduct of CDP hearing--(1) In general. If a taxpayer requests a CDP hearing under section 6320(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled under section 6320 to a CDP hearing for the unpaid tax and tax periods set forth in a NFTL only with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hearing requested under section 6320 will be held in conjunction with any CDP hearing the taxpayer requests under section 6330. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the unpaid tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q-D1. Under what circumstances can a taxpayer receive more than one CDP hearing under section 6320 with respect to a tax period?

A-D1. The taxpayer may receive more than one CDP hearing under section 6320 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6320 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q-D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A-D2. To the extent practicable, a CDP hearing with respect to one tax period shown on the NFTL will be combined with any and all other CDP hearings which the taxpayer has requested.

Q-D3. Will a CDP hearing under section 6320 be combined with a CDP hearing under section 6330?

A-D3. To the extent practicable, a CDP hearing under section 6320 will be held in conjunction with a CDP hearing under section 6330.

Q-D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the unpaid tax and tax period involved in the hearing?

A-D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the unpaid tax and tax periods shown on the NFTL.

Q-D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax periods involved in the CDP hearing?

A-D5. The taxpayer must sign a written waiver.

Q-D6. How are CDP hearings conducted?

A-D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 et seq., do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing.

Q-D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A-D7. The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's residence or, in the case of business taxpayers, the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by correspondence or by telephone. If that is not satisfactory to the taxpayer, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, any other written communications from the taxpayer (including written communications, if any, submitted in connection with the CDP hearing), and any notes of any oral communications with the taxpayer or the taxpayer's representative. Under such circumstances, review of those documents will constitute the CDP hearing for the purposes of section 6320(b).

(e) Matters considered at CDP hearing--(1) In general. Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to the issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax or filing the NFTL that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) Spousal defenses. A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of sections 66 and section 6015 and the regulations and procedures thereunder.

(3) Questions and answers. The questions and answers illustrate the provisions of this paragraph

(e) as follows:

Q-E1. What factors will Appeals consider in making its determination?

A-E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the NFTL filing.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q-E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A-E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q-E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A-E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q-E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A-E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination under section 66 or section 6015 in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q-E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A-E5. No. A taxpayer is precluded by the doctrine of res judicata and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q-E6. What collection alternatives are available to the taxpayer?

A-E6. Collection alternatives would include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q-E7. What issues may a taxpayer raise in a CDP hearing under section 6320 if the taxpayer previously received a notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A-E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the tax liability for the tax and tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q-E8. How will Appeals issue its determination?

A-E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the NFTL filing; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q-E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A-E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q-E10. Why is the Notice of Determination and its date important?

A-E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A-E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q-E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to

dispute the liability prior to the NFTL, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A-E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6330 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decisions made by the Appeals officer with respect to such precluded issues are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by a district court or the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) Examples. The following examples illustrate the principles of this paragraph (e):

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in Example 1, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) Judicial review of Notice of Determination—(1) In general. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph

(f) as follows:

Q-F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A-F1. Subject to the jurisdictional limitations described in A-F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q-F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A-F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief requested with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, then the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6320, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q-F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A-F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q-F4. What happens if the taxpayer timely appeals Appeals' determination to the incorrect court?

A-F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q-F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A-F5. In seeking Tax Court or district court review of Appeals' Notice of Determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing.

(g) Effect of request for CDP hearing and judicial review on periods of limitation and collection activity--(1) In general. The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q-G1. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning the filing of a NFTL?

A-G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final. In no event shall any of these periods of limitation expire before the 90th day after the day on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q-G2. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 be suspended if the taxpayer does not request a CDP hearing concerning the filing of a NFTL, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6320 does not provide for a suspension of the periods of limitation.

Q-G3. What, if any, enforcement actions can the IRS take during the suspension period?

A-G3. Section 6330(e), made applicable to section 6320 CDP hearings by section 6320(c), provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. The IRS may levy for tax periods and taxes covered by the CDP Notice under section 6320 and for other taxes and periods if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods or taxes not covered by the CDP Notice, may file a NFTL for the same tax and tax period stated on the CDP Notice at another recording office, and may take other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) Examples. The following examples illustrate the principles of this paragraph (g):

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in Example 1, except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) Retained jurisdiction of Appeals--(1) In general. The Appeals office that makes a determination under section 6320 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding the NFTL and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q-H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A-H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q-H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) Equivalent hearing--(1) In general. A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an "equivalent hearing." The equivalent hearing will be held by Appeals and generally will follow Appeals' procedures for a CDP hearing. Appeals will not,

however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q-I1. What issues will Appeals consider at an equivalent hearing?

A-I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A-I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q-I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A-I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q-I4. What will the Decision Letter state?

A-I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A-I5. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals' denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) Effective date. This section is applicable with respect to any filing of a NFTL on or after January 19, 1999.

§301.6320-1T [Removed]

Par. 3. Section 301.6320-1T is removed.

Robert E. Wenzel.
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